BAIL SLIP

The Appellants/Accused namely D. Manickam @ Lottery Manickam, 2) Viswanathan were directed to be released on bail as per order of this court, dated 29.3.2001 and made in Crl.M.P.No. 1879/2001 in Crl A No. 1140/2001 on the file of the Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1140 of 2000

1.Manickam
2.Viswanathan .. Appellant's

vs.

The State by the Inspector of Police,
Perundurai Police Station,
Erode District,
(Cr.No.46/1998) .. Respondent

Prayer: This Appeal has been preferred against the judgment dated 12.10.2000 made in S.C.No.104 of 1999 on the file of the I Additional Assistant Sessions Judge, Erode.

For Appellants : Mr.R.T.Doraisamy
For Respondent : Mr.V.R.Balasubramanian, Addl.Public Prosecutor

ORDER

This appeal has been preferred against the conviction and sentence in S.C.No.104 of 1999 on the file of the I Additional Assistant Sessions Judge, Erode.

2. The short facts of the prosecution case is that the appellants along with three other accused on 18.2.1998 at about 1.00 am formed themselves into an unlawful assembly and set fire to Door Nos.2/361, 2/362, 2/363 at Moongle Palayam in Vijayamangalam town, belonging to P.W.1-Subramaniam causing damage to the tune of Rs.4,00,000/- and in the course of the same transaction A1 and A2 have set fire to cycle, T.V.S.Suziki moped and an autorickshaw and other house hold articles belonging to the said Subramanimam causing damages to the tune of

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Rs.3,00,000/-. Hence, the accused have been charged under Section 435, 436 r/w 109 IPC.

3. The case was taken on file by the District Munsif-cum-Judicial Magistrate, Perundurai as PRC.No.15 of 1998. On appearance of the accused on summons copies under Section 207 of Cr.P.C., were furnished to the accused and since the case is triable by a Court of Sessions, the learned judicial Magistrate has committed the case to the Court of Sessions under Section 209 of Cr.P.C., from where the case was transferred to the I Additional Assistant Sessions Judge, Erode.

4. On the side of the prosecution, P.W.1 to P.W.15 were examined and Ex.P.1 to Ex.P.7 were exhibited and M.O.1 to M.O.10 were marked.

5. P.W.1 is the complainant. According to P.W.1 due to election motive on 17/18.2.1998 mid night he saw his house was engulfed and in the fire about Rs.7,00,000/- worth of properties were damaged. According to him, the general election which took place on 16.2.1998 he was a booth agent for one of the political parties and the accused lottary Manikam, Kutty, Viswanathan came in a moped and stopped their moped 20 feet away from their booth and when this was questioned by him (P.W.1) there arose a commotion and after the election was over he returned to his house and at that time the accused Manikam, (a memebr) Arumugam, Kittu @ Kittumi, Kutty and Viswanthan came to his house at about 8.00 pm on 16.2.1998 and asked him to attend the panchayat to be held at Vijayamangalam Mekoor on 17.2.1998 and further they criminally intimidated that if they do not attend the panchayat they will be set fire alive. P.W.1 would further depose that out of fear he did not go to the panchayat on 17.2.1998.

6. P.W.2 is the son of P.W.1 who has corroborated the evidence of P.W.1

7. P.W.3 is not an eye witness to the occurrence, but he would say that there was a fire on 17.2.1998 in the place of occurrence and many house hold articles including autorickshaw and two weelers, TV and cycle belonging to P.W.1 got destroyed in the fire and P.W.1 preferred a complaint.

8. P.W.4 and P.W.5 also corroborated the evidence of P.W.1 to P.W.3.

9. P.W.6 is not an eye witness to the occurrence. He speaks only about the quarrel which took place on 18.2.1998 at about 1.00 am in front of Government school, Vijayamangalam in which P.W.1 is the president of the Parents and Teachers Association. He would say that some of the people belong to Makoor Village came there and threatened the parents and teachers and school going children with the dire consequences, if they attend the class on the next day.

10. P.W.7 also speaks about the scuffle which took place on 16.2.1998 between P.W.1 and the accused in connection with the general

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election which took place on 16.2.1998. He would say that at about 1.00 am on 17.2.1998 his brother's and sister's houses got gutted due to fire and the fire service was pressed into service at about 4.00 am and P.W.1 has preferred a complaint.

11. P.W.8 is an eye witness to the occurrence. He would say that he saw both A1 and A2 with burning fire sticks in their hands at 12.00 mid night on 17.2.1998 near the place of occurrence and at the instigation of A2, both A1 and A2 have thrown the burning sticks on the house and shop of P.W.1 and in the fire P.W.1's hotel and his brother's cycle shop and paper shop and other house hold articles got damaged.

12. P.W.9 is an another eye witness on the side of the prosecution, who would depose that he saw A1 and A2 with burning sticks on 17.2.1998 mid night and at the instigation of A2, both A1 and A2 have threw the burning sticks on the hotel and cycle shop of P.W.1 and his brother causing damages to two weelers, autorickshaw, moped and cycle shop besides house hold articles.

13. P.W.10 would say that the damages caused to the shop and the house hold articles of the P.W.1 will come to Rs.7,00,000/-.

14. P.W.11 is not an eye witness, who speaks about the previous enmity prevailing between the accused and P.W.1.

15. P.W.12 would say that the police visited the place of occurrence and prepared Ex.P.3 mahazer in his presence.

16. P.W.13 is a fire service personnel, who would depose that the service of fire engines were pressed into service about 1.51 am on 18.2.1998 and Ex.P.4 is the report given by him, about the fire accident.

17. P.W.14 is the Sub-Inspector of Police, who after receiving the complaint from P.W.1 had registered the case in Perundurai Police Station Cr.No.46/1998 under Section 147, 427, 436 IPC. Ex.P.5 is the FIR.

18. P.W.15 is the Investigation Officer, who had visited the place of occurrence and prepared observation mahazar on the basis of the complaint-Ex.P.1 preferred by P.W.1 and had drawn Ex.P.6-rough sketch in the presence of witnesses and has sent the material objects seized from the place of occurrence to the Court under Ex.P.7-form-95. He has examined the witnesses and recorded their statement and after completing the investigation he has filed the charge sheet under Section 407, 435, 436 IPC and under Section 436 r/w 109 IPC against the accused on 25.5.1998.

19. When incriminating circumstances were put to the accused, the accused denied their complicity with the crime. The learned I Additional Assistant Sessions Judge after going through the oral and documentary evidence has held that the charges levelled against A1 and A2 has been proved beyond any reasonable doubt and accordingly convicted A1 & A2 under

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Section 436 IPC and sentenced to undergo 7 years RI each and slapped a fine of Rs.20,000/- each with default sentence. The learned trial Judge has also convicted A1 & A2 under Section 435 IPC and sentenced each to undergo 5 years RI each and imposed a fine of Rs.5,000/- each with default sentence. Aggrieved by the findings of the learned trial Judge the accused have preferred this appeal.

20. Now the point for determination in this appeal is whether the prosecution has proved the guilty of the accused beyond any reasonble doubt to warrant conviction?

21. The Point:- The learned counsel for the appellants would mainly focused the attention of this Court to the delay caused in this case in preferring the complaint-Ex.P.1. The learned counsel would submit that there is a delay of about 11 hours in preferring the complaint. According to P.W.1, the occurrence had taken place on 17.2.1998 at about 12.30 am, but he has preferred the complaint only on 18.2.1998 at 11.00 am. The learned counsel for the appellants would say that the distance between the place of occurrence and the jurisdiction police station (Perundurai police station) is 10 kms and even according to P.W.14, the Sub-Inspector of Police, who has registered the case under Ex.P.5, a person can reach the police station within 15 minutes if he comes in a car and that P.W.1-complainant in his cross-examination has admitted that he along with his son and others came in a car to prefer Ex.P.1-Complaint. No acceptable explanation was given on the side of the prosecution for this delay of 11 hours in preferring this complaint. But according to the learned counsel for the appellants, due to political enmity that was prevailing between P.W.1 and the accused after his shop and cycle shop of his brother got damaged due to fire accident after due deliberation and consultation with his party members P.W.1 has implicated the accused falsely in this case. Yet another important point to be noted in this case is that along with the list of witnesses submitted by P.W.15, Investigation Officer, along with the charge sheet, the eye witnesses' viz. P.W.8 & 9 names do not find a place. This creates a great suspicion on the case of the prosecution. The natural conduct of an Investigation Officer should be to mention the eye witnesses on the top of the list of the witnesses. But to our dismay in this case in the list of witnesses furnished by the Investigation Officer along with charge sheet to the Court neither P.W.8's name nor P.W.9's name find a place. Certainly the benefit of doubt shall inure in favour of the accused. The non-explanation of mentioning the ocular witnesses in the list of witnesses sent along with the charge sheet cuts at the root of the prosecution case. Under such circumstances, I am of the view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. The learned trial Judge has by over site failed to note this point held that the accused is guilty under the provisions of criminal law, which warrants interference from this Court. Point is answered accordingly.

22. In the result, the appeal is allowed and the conviction and sentence passed against the accused in S.C.No.104 of 1999 on the file of the First Additional Assistant Sessions Judge, Erode, is set aside and

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both A1 and A2 are acquitted of all the charges levelled against them. Fine, if any paid by the accused, shall be refunded to the accused. Bail bonds stands cancelled.
ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,
1.The I Additional Assistant Sessions Judge,
Erode.

2.-do- thro The Principal Sessions Judge, Erode.

3.The Judicial Magistrate, Perundurai.

4. -do- thro The Chief Judicial Magistrate, Erode.

5. The Inspector of Police,
Perundurai Police Station, Erode.

6.The Public Prosecutor,
Madras High Court.

7.The Superintendent of Central Prison,
Coimbatore.

+ One cc to M/s R.T. Doraisamy SR 28174
GK (co)
sg 4/5/07

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